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RHMCSSU/FAA WASHDC
RUEAHLC/HOMELAND SECURITY CENTER WASHDC

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TAGS: [FAIR](#) [KTIA](#) [ECON](#) [KE](#)
SUBJECT: Kenya Air Services Negotiations; Questions from Kenya Airways

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¶1. (U) This is an action message. Please see para 7.

¶2. (SBU) Summary: Kenya Airways sees no real benefit from Kenya signing an Open Skies Agreement with the U.S. until Kenya achieves Category 1 status. In fact, it is concerned about the potential competition from U.S. airlines that could serve Nairobi if an Open Skies Agreement were reached. End Summary.

Kenya Airways Wary of Open Skies Agreement

¶3. (SBU) Econoff met with Kenya Airways (KQ) officials to learn their understanding of some of the issues raised in ref A. They had already reviewed the model Open Skies Agreement (OSA) and recognized many of the provisions as industry standards. KQ has not yet analyzed the potential commercial impact of an OSA, and has no position yet on whether Kenya should sign one. It would partly depend on whether other countries in the region would allow KQ to transfer passengers from the U.S. to other African countries via Kenya (implementation of the Yamoussoukro Agreement). However, the officials saw no reciprocal advantage in an OSA for KQ until Kenya achieves Category 1 status, thereby allowing KQ to apply for direct flights to the U.S. Wet leasing is expensive, and Kenya Civil Aviation Authority (KCAA) regulations restrict its use. Code sharing with Northwest or other Star Alliance partners is not allowed without Category 1. KQ officials asked whether the OSA could be implemented in stages, but could not specify which provisions they meant. (Note: Econoff told them the entire OSA cannot be made provisional or transitional. End note.)

¶4. (SBU) The KQ officials said KCAA and the Kenya Airport Authority (KAA) claim that meeting security requirements for Category 1 and direct flights requires completing the new terminal at Jomo Kenyatta International Airport, mainly to separate incoming and outgoing passengers. However, the KQ officials claimed that KQ's and JKIA's

security procedures have been approved by Israeli security officials for direct flights to Israel. Although incoming and outgoing passengers mingle in the main concourse at JKIA and on the tarmac while walking to/from planes, they suggested KQ and JKIA could meet TSA requirements by screening passengers for a flight to the U.S. at

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the gate, holding them in a sterile area, and then sending them to the airplane by shuttle bus.

¶ 15. (SBU) KQ's current inventory of airplanes and crew would prevent KQ from starting service to the U.S. immediately, but at some point it might be possible to divert a Boeing 777 to the U.S. route. However, the uncertainty of when Kenya will achieve Category 1 makes it difficult for KQ to make plans for serving the U.S. The officials agreed that Delta's proposed direct flight to begin in June 2008 could benefit KQ by providing passengers for KQ's flights to domestic and regional destinations including Mombasa, Zanzibar and Dar es Salaam.

Comment

¶ 16. (SBU) The comments and questions from the KQ officials indicated KQ is not prepared to support an OSA at this time, and may subtly oppose one by raising too many important issues for the Ministry of Transportation to ignore. Absent a more immediate prospect of Kenya achieving Category 1, KQ appears to be focused on more urgent problems, and would likely postpone the costs of analyzing the potential commercial impact of an OSA.

Kenya Airways Questions About Model OSA

¶ 17. (SBU) KQ requests answers to the following questions. Embassy would appreciate answers from concerned Washington agencies.

- Please confirm whether KQ could enter into a code sharing arrangement in which a U.S. partner flies the Dakar-U.S. leg and KQ flies the Nairobi-Dakar leg before Kenya achieves Category 1. Would

an OSA affect this?

- Please confirm whether an OSA would allow KQ to code share with a U.S. or non-U.S. carrier on flights via Europe before Kenya achieves Category 1.

- Would chapter 11 protection or USG subsidies constitute unfair competition and fall under Article 12.1.c limits on intervention by the Parties to protection of airlines from prices that are artificially low due to direct or indirect governmental subsidy or support?

- What is the purpose of including a provision on intermodal transportation in an aviation agreement? KQ has no landside delivery service, and any prospect of it developing one may excite resistance to the OSA from road and rail carriers in Kenya, who are unlikely to want to operate in the U.S. Is the potential benefit to U.S. firms worth raising this issue with Kenyan stakeholders?

- Under the Fly America Act, would USG travelers be required to fly Delta or any other U.S. carriers' direct U.S.-Kenya flights, or could they still choose to fly via Europe on KLM and KQ?

- Would the change of gauge provision require Kenya to allow a U.S. carrier to base aircraft in Nairobi to provide onward service to other East African destinations, in direct competition with KQ?

- Since Kenya has only one international airline, could it swap higher frequency of flights for co-termination and cabotage rights, i.e. the right for one flight to serve multiple U.S. points and carry U.S. passengers between those points?

- KQ requests clarification of the Fifth Freedom Rights between two countries that sign OSA's with the U.S. Would the U.S. help Kenya by encouraging Senegal to allow a KQ flight to the U.S. to carry passengers between Dakar and the U.S. and Dakar and Nairobi? Delta appears to be offering this service, which would compete directly with KQ's service to Dakar. Would such an agreement be covered in the OSA or in a side agreement?

- Please explain Annex 1, section 2.2, operational flexibility. How can one aircraft operation have two flight numbers?

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